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IN THE

Supreme Court of the United States

No. 866

L. L. SKAGGS, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ROBERT ASH,
Munsey Building,
Washington, D. C.,
Attorney for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Chief Justice and the Justices of the Supreme Court:

The petition of L. L. Skaggs respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED.

Two issues were involved below. Certiorari is sought only on the question of whether the rents from separately owned real estate, located in California, are community or separate income of the petitioner who was domiciled in Texas. The facts on this issue are stated by the Circuit Court of Appeals (R. 41-42):

> "The taxpayer, L. L. Skaggs, was married in January, 1929, and has since been domiciled in Texas. In

1926 he had acquired a building in California, which yielded in the tax year 1934 net rents upon a lease in the amount of $11,468.00."

In California rents from separate real estate are separate income. In Texas they are community income.

The Commissioner of Internal Revenue determined that the said rents constituted separate income (R. 10); the Board of Tax Appeals reversed (R. 14-23), and the Circuit Court of Appeals, Senior Circuit Judge Foster dissenting, reversed the Board (R. 41-46) and sustained the position of the Commissioner.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I.

The decision below is in conflict with *New York ex rel. Cohn* v. *Graves,* 300 U. S. 308, which holds that the law of the domicile governs the right to tax income from real estate rents. The decision of the Circuit Court of Appeals in the case at bar holds that the situs of the real estate which produced the income, rather than the domicile of the recipient, governs the taxation of the income.

II.

The decision below is in conflict with *Irwin* v. *Gavit,* 268 U. S. 161, which holds that a tax on income from property is not a tax on the property producing the income.

III.

The decision below is in conflict with the established law as set forth by the Board of Tax Appeals (R. 16-21) that "rents due or past due are 'simply an item of money due and payable' " and, as such, are choses in action governed by the law of the domicile of the owner.

IV.

The rule established by the court below opens up an avenue of tax avoidance. If, as the Circuit Court held, the situs of real estate governs the taxability of income therefrom, wealthy residents of non-community states can invest in real estate located in Texas, or in other community property states having the Texas rule, and divide the income between husband and wife with the resulting tax saving.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit in the above-entitled and numbered cause.

L. L. SKAGGS,
By:
ROBERT ASH,
Munsey Building,
Washington, D. C.,
Counsel for Petitioner.